

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

CHARLES NEVOTNEY BOLTON	§	
	§	
	§	
v.	§	Civil No. 1:18cv132-HSO-JCG
	§	
	§	
KENNETH GARNER	§	DEFENDANT

**ORDER ADOPTING MAGISTRATE JUDGE’S [21] REPORT AND
RECOMMENDATION AND DISMISSING CASE WITHOUT PREJUDICE**

This matter comes before the Court on the Report and Recommendation [21] of United States Magistrate Judge John C. Gargiulo, entered in this case on March 6, 2019. Based upon the Magistrate Judge’s review of the record and relevant legal authority, he recommended that this case be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b) for Plaintiff’s failure to prosecute and to abide by the Court’s Orders. R. & R. [21] at 3. For the reasons that follow, the Court finds that the Report and Recommendation [21] should adopted in its entirety as the finding of this Court and that this case should be dismissed without prejudice.

I. BACKGROUND

Plaintiff Charles Nevotney Bolton (“Plaintiff”) filed a pro se Complaint [1] against Defendant Kenneth Garner in this Court on April 18, 2018. Plaintiff is proceeding *in forma pauperis*. On April 23, 2018, the Magistrate Judge entered an

Order [3] providing Plaintiff certain information and warning Plaintiff that his failure to advise the Court of a change of address would be deemed as a purposeful delay and contumacious act and could result in this case being dismissed sua sponte, without prejudice, and without further written notice. Order [3] at 2. The Magistrate Judge repeated this same warning in two Orders [5], [6] entered on June 18, 2018. *See* Order [6] at 2; Order [5] at 3.

On or about September 14, 2018, Plaintiff submitted a Notice [11] of change of address. Plaintiff stated that the

[r]eason for this letter is to provide y'all with my new address. I'm not going to be here long at all am [sic] here to get process [sic] then I will be headed to another facility somewhere.

Notice [11] at 1. The envelope [12] that the Clerk of Court mailed to Plaintiff at his new address containing the notice of electronic filing of Plaintiff's Notice [11] of his change of address was marked "RETURN TO SENDER. NOT DELIVERABLE AS ADDRESSED. UNABLE TO FORWARD." Envelope [11] at 12.

On October 1, 2018, the Magistrate Judge entered an Order [13] setting a deadline for Defendant to file any motions for summary judgment based upon failure to exhaust administrative remedies. The envelope [14] containing this Order [13] was also returned.

On November 12, 2018, Defendant Kenneth Garner ("Defendant") filed a Motion [15] for Summary Judgment pursuant to Federal Rule of Civil Procedure 56, arguing that Plaintiff failed to exhaust available administrative remedies. *See* Mot. [15] at 2; Mem. [16] at 3-5. Plaintiff has not responded to Defendant's Motion

[15].

On December 12, 2018, the Magistrate Judge entered an Order [17] to Show Cause why this case should not be dismissed for failure to prosecute and abide by the Court's orders on grounds that Plaintiff had not informed the Court of his new address. The envelope [18] containing the Order [17] to Show Cause was returned. The Magistrate Judge entered a second Order [19] to Show Cause on January 22, 2019, and again, the envelope [20] was returned. To date, Plaintiff has not responded to the two Show Cause Orders [17], [19].

On March 6, 2019, the Magistrate Judge entered a Report and Recommendation [21], recommending that this case be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for Plaintiff's failure to prosecute and to abide by the Court's Orders. R. & R. [21] at 3. The Report and Recommendation [21] was mailed to Plaintiff on March 6, 2019, via certified mail return receipt requested. While the certified mail return receipt was initially returned, signed by an "L. Boyd" on March 11, 2019, Return [22] at 1, the envelope itself was returned to the Clerk marked "RETURN TO SENDER. ATTEMPTED – NOT KNOWN. UNABLE TO FORWARD. RETURN TO SENDER," Envelope [23] at 1.

Any objection to the Magistrate Judge's Report and Recommendation [21] was due within fourteen (14) days of service. L.U. Civ. R. 72(a)(3). To date, Plaintiff has not filed any objection to the Magistrate Judge's Report and Recommendation [21], and the time for doing so has passed.

II. DISCUSSION

Where no party has objected to a magistrate judge's report and recommendation, a court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) ("a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made"). In such cases, the court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge's findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. Plaintiff has not kept the Court apprised of his mailing address, even after being warned several times that failure to do so would be deemed a purposeful delay and contumacious act that may result in dismissal. *See, e.g.*, Order [6] at 2; Order [5] at 3; Order [3] at 2. Such inaction represents a clear record of delay or contumacious conduct by Plaintiff. It is apparent to the Court that Plaintiff no longer wishes to pursue this case.

The Court will adopt the Magistrate Judge's Report and Recommendation [21] as the opinion of this Court, and this civil action will be dismissed without prejudice for Plaintiff's failure to prosecute and to abide by the Court's Orders.

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [21] of United States Magistrate Judge John C. Gargiulo, entered

in this case on March 6, 2019, is **ADOPTED** in its entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, this civil action is **DISMISSED WITHOUT PREJUDICE** for Plaintiff's failure to prosecute and to abide by the Court's Orders. A separate final judgment will be entered pursuant to Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 6th day of June, 2019.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE